

# Bavaria is Germany, isn't it? The case of the German Land Bavaria. A Historical and Political Approach

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*Nire azterketak erakusten duenez, Bavariako Estatu Libreak, Alemaniako kanpoaldean baina Europako erdialdean kokatuak, autonomiaren aldeko aldarrikapena eta Alemaniako eta Europako bizitza politikoan parte hartzeko nahia bateratu nahi ditu. Independentzia eta integrazioa ez dira bateraezinak eta hala erakusten du Bavariaren jarrera bereziak.*

*Giltza-Hitzak: Estatu libre. Ez-independentea. Estatus berezia. Bereztasun historikoa. Bavaria. Alemania.*

*Mi análisis muestra que el Estado Libre de Baviera, más bien en la periferia de Alemania pero en el centro de Europa, pretende equilibrar la reivindicación de autonomía y el deseo de participar en la vida política de Alemania, así como en la de Europa. Independencia e integración no son incompatibles, representan la posición especial de Baviera.*

*Palabras Clave: Estado Libre. No independiente. Estatus especial. Peculiaridad histórica. Baviera. Alemania.*

*Mon analyse montre que l'État libre de Bavière, périphérique pour le territoire allemand mais situé au centre de l'Europe, cherche à équilibrer ses revendications d'autonomie et son désir de participer à la vie politique à la fois de l'Allemagne et de l'Europe. L'indépendance et l'intégration ne sont pas considérées comme incompatibles, mais représentent plutôt une position particulière de la Bavière.*

*Mots Clé : État libre. Non indépendant. Statut spécial. Particularité historique. Bavière. Allemagne.*

## INTRODUCTION

Talking to international colleagues I have often got an impression that the first things they associate with Germany are the following: Leather Trousers, *Hofbräuhaus* (Hofbrew House), Beer, Sausages, Mountains, King Ludwig's castles and the *Oktoberfest*, all of which are actually Bavarian.

Moreover, upon my first arrival in Oxford, my College welcomed me as the new Austrian graduate, probably after my first conversation, in my Bavarian coloured English. These two events happening to me characterise the speciality of Bavaria rather well. On the one side Bavarians are seen as 'the Germans par excellence', on the other side they are even perceived as being Austrians.

So obviously a contrast in perception exists. Basically, most Bavarians do not see themselves like fitting to one of the two patterns described before. Those are the product of the perception from abroad, where 'the Germans' are often seen as a kind of mixture between Prussians and Bavarians. There are cartoons for example, in which e.g. Canadians see the Germans like soldiers, or like Bavarians, again relying on the two options sketched before, which of course do not resemble the reality to any acceptable extent. Following this pattern, Bavaria is more or less summarised as consisting of the October Feast, her modern technologies, for example such as BMW, Audi and Siemens, her predominant party, the Christian Social Union (CSU) which rules the country since nearly 50 years. All of this is basically seen as being the main features of modern Bavaria. Moreover, of course also the historical features, like King Ludwig II of Bavaria are linked to her.

Why is this the case and how do the Bavarians see themselves when it comes to Germany and being German?

Clearly, most Bavarians feel different, *indeed*, from the rest of Germany and for them nothing is more absurd than seeing Bavaria as a kind of prototype Germany. But for non Germans/Bavarians it is much harder to understand this difference.

But what does this difference consist of? Clearly, it is neither an ethnic nor legal one. The German *Grundgesetz* (Basic Law, the 1949 constitution) gives the same provisions to all German *Länder*.

Thus, some questions become relevant: How does Bavaria interact with the rest of the German Federation? What are the roots of the so called 'Bavarian Factor' which CNN analysed as one of the key variables in the German September 2002 elections? Is there a 'Bavarian Myth'? What are the socio-political peculiarities in the Bavarian case? How does this special role and identity find its expression in constitutional amendments? Are the Bavarians -to follow the thoughts of Professor Xabier Ezeizabarrena- really an entirely special case, like the Basques are in Spain?

In this paper I will try to trace some of the roots to these differences. However, being a trained political economist and historian and lacking an adequately deep knowledge of constitutional law, my approach will be socio-political and historical,

rather than legal. In the case of Bavaria it seems to be worthwhile to take social, cultural and psychological factors on board when analysing the questions set out for this paper.

## 1. AN OUTLINE OF BAVARIAN HISTORY

Bavaria is situated in the southeast of Germany and the Bavarians have often provoked very different opinions about themselves. Otto von Bismarck for example stated that 'Bavaria is perhaps the only German province which developed due to its material wealth a kind of national feeling and self-content.' On the contrary, the perception the Bavarians had about Bismarck and also the northern Germans was less positive and these two aspects are very important for Bavaria's role within Germany, as they determine another characterisation of Bavaria's image within Germany. In this context Bismarck's second conclusion about the Bavarians ought not to be omitted when analysing Bavaria's role within Germany, as he said: 'Incorporating Bavaria into a German national state would have the same negative consequences as having incorporated Sicily had for the unified Italy'.<sup>1</sup> Alike the case of Sicily within Italy, also Bavaria had its very own and indeed very different historical development. Thus, it is indispensable to sketch the most important determinants of Bavarian history to enable a well founded analysis of the 'Bavarian case'.

Bavaria is one of the oldest European state entities. It dates back to about 500 A.D., when the Roman Empire was destroyed by the onslaught of Germanic tribes. According to a well accepted theory, the Bavarian tribe had descended from the Romans who remained in the country, the original Celtic population and the Germanic invaders. Having their Tribal Duchy at the foothills of the Alps, the Bavarians managed to set up a powerful Bavarian duchy under the Agilolfingers during the later half of the 6th century A.D. The Agilolfingers were followed by the Guelphs in the 10th century. In 1158, Duke Henry the Lion (Lion Heart) founded a new settlement on the river Isar, which is the Munich of today, i.e. *Ad Monachos*, where the monks live (like today's *Monaco*). Thus, both towns have a monk in their crests.). Until the middle of the 13th century Regensburg served as the Bavarian capital.<sup>2</sup>

After removing Henry the Lion as Bavarian Duke, Emperor Friedrich Barbarossa gave the Duchy in 1180 to the Bavarian Count Palatine Otto von Wittelsbach, having separated the territory of the Bavarian Ostmark (Austria) beforehand. This was the moment, when Austria was divided from Bavaria. In 1214, the Wittelsbachs acquired also the Palatinate, which remained linked with the destiny of Bavaria for the next 700 years. The following centuries of Bavarian history were marked by the efforts of the Wittelsbach Dukes to expand their territory.<sup>3</sup> Moreover, the dioceses of Salzburg, Passau and Regensburg, monasteries like Tegernsee,

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1. See Willms, *Bismarck - Dämon der Deutschen*.

2. See Hubensteiner, *Bayerische Geschichte*.

3. See Glaser, 'Die Zeit der frühen Herzöge – Von Otto I. zu Ludwig dem Bayern'.

Niederalteich and St. Emmeram were established as spiritual and cultural strongholds. This development had its peak under emperor Ludwig IV ('the Bavarian', 1302 - 1347), who managed to become German King and Roman Emperor and who could add Brandenburg, Holland and the Hennegau in today's Belgium to his Bavarian possessions.<sup>4</sup> However, this successful 'imperial' era in which Bavaria dominated the Holy Roman Empire and thus a large part of Europe, encompassing the area of today's Austria, Liechtenstein, Switzerland, Eastern France, Luxemburg, Belgium, the Netherlands, Germany, Western and Northern Poland, Lithuania, the Russian district of Kaliningrad, the Czech Republic, Slovenia, North Western Croatia, Northern Italy and Monaco, remained a very short episode, as Ludwig's successor as Bavarian leader proved unable to protect his father's gains.<sup>5</sup>

In the 14th and 15th centuries Bavaria was weakened because of the partition of her lands due to the rules of Wittelsbach inheritance.<sup>6</sup> Finally, Albrecht IV the Wise (1467-1508) reunited the Duchy of Bavaria and set the basis for its durability by introducing the Law of Primogeniture. However, in the 12th and 13th centuries numerous ecclesiastical holdings and secular territories developed in Franconia and Schwabia after the end of the royal lines of the Salier and Staufer. Nevertheless, the courts of Bamberg, Würzburg, Ansbach and Bayreuth, as well as the cities of Nuremberg, Augsburg, Schweinfurt, Rothenburg and Nördlingen developed as cultural and scientific centres of European renown.<sup>7</sup> Although the Reformation was entrenched in many regions and free cities of Schwabia and Franconia, Old Bavaria, i.e. Lower Bavaria and Upper Bavaria, stayed faithful to Catholicism, as well as most of the Upper Palatinate did. Under the rule of Albrecht V (1550 - 1579) and Wilhelm the Pious (1579 - 1597), Bavaria became a centre of the Catholic Counter-Reformation. Luther's famous opponent, Johannes Eck, taught at Ingolstadt University which had been founded by Duke Ludwig the Rich in 1472. During the rule of Albrecht V the ducal capital of Munich flourished for the first time as a centre of science and arts.<sup>8</sup>

The Thirty-Year War devastated Bavaria, but as one of its results Bavaria was promoted to the status of a permanent member of the Committee, electing the German Emperor (1623). Maximilian I (1597-1651), the first Bavarian Prince Elector, added the Oberpfalz (Upper Palatinate) to Bavaria's territory. One of his successors, the 'Blue Prince Elector' Max Emmanuel (1662 - 1726), was very much in favour of Baroque art and culture.<sup>9</sup> Moreover, he was very active during the Turkish wars and he developed greater-state ambitions, which he had to give up when Karl Albrecht became the German Emperor in 1742/1745.<sup>10</sup>

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4. See Schmid, *Ludwig der Bayer, Herrscher im Widerstreit*.

5. See Angermeier, 'Bayern in der Regierungszeit Kaiser Ludwigs IV. (1314-1347)' and Idem., 'Kaiser Ludwig der Bayer und das deutsche 14. Jahrhundert'.

6. See Straub, 'Bayern im Zeichen der Teilungen und der Teilherzogtümer (1347-1450)'.

7. Bavarian State's Chancellery, Press Release Office, 2003.

8. Ibid.

9. Ibid.

10. See Hubensteiner, *Bayerische Geschichte*.

## Napoleon and Bavaria

After the Palatinate Zweibrücken line was coming to power in Bavaria, Prince Elector Max IV Josef (1799 - 1825) had to face difficult tasks on the field of foreign policy. The German Empire was too unstable to offer support for Bavaria, neither did Prussia and Austria was still pursuing her plan to claim Bavarian territory. Thus, the Prince sought the protection of Napoleon. In exchange for her territories she had give up along the Rhine and in accordance with the Reichstag Extraordinary Commission (Reichsdeputationshauptschluss) in 1803, Bavaria received the dioceses of Würzburg, Bamberg, Freising and Augsburg, parts of the eparchies of Eichstätt and Passau, twelve abbeys and 15 imperial towns, amongst them Regensburg, where the Imperial Diet had had its sessions since the 17<sup>th</sup> century. As additional benefit for the seamless cooperation with Napoleon, Max IV Josef became King Max I on 1 January 1806. Moreover, he also joined Napoleon's Rhine Confederation. His First Minister, Count Montgelas, introduced a well functioning government organization and the Constitution of 1808 provided for the first time for the equality of all citizens, for personal protection, for the protection of property, for the freedom of consciousness and for the independence of the judiciary. The Constitution of 1818 is regarded as the first step towards parliamentary democracy in Bavaria. The newly founded *Landtag* consisted of two chambers: of the Councillors and of the Deputies.<sup>11</sup> Due to its power to decide upon the funds accumulated from taxes, it soon acquired a crucial role in politics and legislation.<sup>12</sup> Although being on Napoleon's side throughout his dominance over Europe, Bavaria allied herself with the enemies of Napoleon during the Wars of Liberation. As a price for her policies until 1815, she had to return her Austrian possessions, but at the 1815/16 Congress of Vienna she was nevertheless awarded Würzburg, Aschaffenburg and parts of the Palatinate on the left side of the Rhine. Bavaria joined the newly created German Customs Union in 1833.<sup>13</sup>

During the reign of Ludwig I (1825 - 1848), Munich became a cultural centre of Germany. Poets, painters, architects and scientists were summoned to the capital from all over Germany. The King also promoted trade and industry. Under his reign the construction of the railway network was started in 1835, commencing with the Nürnberg-Fürth line. The Revolution of 1848 brought as one result that considerable restrictions were implemented on the power of the monarch ('March Demands', i.e. ministerial responsibility, freedom of the press, electoral reform). As one consequence of these limitations of power (next to his affair with the dancer Lola Montez), Ludwig I abdicated in favour of his son, who ascended the throne as Maximilian II (1848 - 1864).<sup>14</sup>

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11. Ibid.

12. See Bavarian State's Chancellery, Press Release Office, 2003.

13. See Hubensteiner, *Bayerische Geschichte*.

14. See Ibid.

## The dusk of Bavarian Sovereignty

Maximilian continued the work of his father, in particular as being a patron of the arts, but he also initiated social and political reforms, and was a great promoter of the sciences. Most importantly, however, he was active on the field of foreign policy. Maximilian's foreign policy was mainly concerned with preserving the Status Quo, the German Federation (Deutscher Bund, 1815-1866).<sup>15</sup> However, achieving this aim was linked to several prerequisites and all of them had developed in disfavour of Bavaria during the 1850s and 1860s. 'The will for cooperation and solidarity amongst the great powers, the peaceful Dualism between Austria and Prussia as well as the German Federation which had been created to strengthen the Status Quo' collapsed. Moreover, the diffuse world of the medium and small states of the German Federation wasn't very inclined to be brought in line by Bavaria'. Bavaria was also missing the political and military power as an 'argument' for 'disciplining' her small and medium fellow states.<sup>16</sup> Thus, these medium and small states accounted for the failure of Bavaria's 'Trias Concept', which aimed for a 'Third Germany', consisting of small and medium states under the leadership of Bavaria, as an alternative to a Germany dominated by either Prussia or Austria.<sup>17</sup> However, this concept also failed due to 'the notorious jealousy and the permanent need of the small states to protect their underdeveloped self esteem by stressing their independence.'<sup>18</sup>

Although King Maximilian's Trias Concept couldn't be carried out successfully due to this negative framework, it produced a 'monumentum aere perennius', a monument, more durably than ore, as Augustus called his literary bequest, the 'Res Gestae'.<sup>19</sup> Due to the lacking prospects of his foreign policy, the king turned more and more towards cultural and education policy. The fruits of this development can be still seen today at the example of the unprecedented facilities of the Maximilianeum and its bequest for highly gifted persons and students of Bavaria which gives every year a limited number of scholarships to the best pupils of Bavaria after having passed their A-levels.

As a consequence of the early death of Maximilian II, the ideas of the 'Trias' died with him. His young and little pragmatic son, who ascended the throne as King Ludwig II (1864-1886), failed to safeguard Bavaria's interests as a medium power during the stormy years of the late 1860s. Faced with the challenge, Ludwig II merely retreated to plan one of his numerous castles and he continued to sponsor his admired composer, Richard Wagner. His expensive aesthetic tastes ruined Bavaria's finances and brought her to the brink of state bankruptcy. Due to Ludwig's notorious lack of political interest and inactivity on the field of

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15. See Glaser, p. 189, in: Lutz and Rumpler (Eds.), pp. 140-88.

16. See Gruner, *Das Bayerische Heer 1825-1864*, pp. 268 ff.

17. See Rumpler, 'Bayern zwischen Deutschland und Österreich. Die mitteleuropäische Dimension der Politik Ludwig von der Pfoldtens'.

18. See Ibid., p. 189.

19. See Weber, *Augustus – Res Gestae*.

foreign policy, Bavaria slipped nearly unprepared into the wars against Prussia and France.<sup>20</sup> In 1866, Bavaria found herself on the side of Austria against Prussia, but in 1870-1871 she was forced to become an ally of Prussia, fighting with her against France. After the German-French War Bavaria had to join the newly founded Reich and as a consequence of Bavaria's disastrous financial situation Bismarck was able to persuade Ludwig II to write upon his initiative the so called '*Kaiserbrief*' (Letter to the Emperor) of 30 November 1870 in which Ludwig offered the Prussian King Wilhelm the title of a German Emperor on behalf of all other German Princes and which became the basis for the proclamation of King Wilhelm I as Emperor of Germany. In return Bismarck assured Ludwig the financial assistance he so urgently needed, in order to continue the building of his castles and Bismarck also paid a part of Ludwig's debts by transferring parts of the so called '*Reptilienfonds*' or '*Welfenfonds*', money which Prussia had confiscated from the ruling Guelphs after annexing the Kingdom of Hanover in 1866.<sup>21</sup> The letter of Ludwig was most important for Bismarck, as the historical German constitutional conventions required the second most important monarch to offer the title of the German Emperor to the most important monarch. Since Bavaria was beyond any doubt the second largest state of the newly created German Empire (since Austria was forced out of Germany in 1866), Ludwig had to offer the title, since the offer of e.g. the King of Württemberg or Saxony would have made the emperorship a second class title.<sup>22</sup>

From 1875 until his death in 1886, Ludwig II (known all over the world as the 'Fairy-Tale King') was withdrawing increasingly from politics and devoting himself to further castle-building and to the captivating world of Wagner's music. He did not appear in public any longer. He died in 1886 under mysterious circumstances on the shore of Lake Starnberg. His uncle, the capable Prince Regent Luitpold (1886 - 1912), and his son, King Ludwig III (1912 - 1918), were the last rulers of the Wittelsbach Dynasty, which had ruled Bavaria for 738 years. Bavaria ceased to be a monarchy.

## Bavaria as a Republic

After the First World War a provisional National Council elected Kurt Eisner (USDP, the Independent Social Democratic Party) as Ministerpräsident (Prime Minister). On 8 November 1918 he declared Bavaria a Republic. Shortly afterwards, his assassination sparked a wave of violence. A Communist-ruled 'Soviet Republic of Bavaria' was proclaimed on 6 April 1919. It was opposed and defeated by the so-called Freikorps (Freelance Troops). During these stormy times, the *Landtag*, elected on 12 January 1919, had moved to Bamberg and on 12 August 1919 it adopted the new Bavarian Constitution.<sup>23</sup> Right from the start,

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20. See Neugebauer, *Grundzüge der deutschen Militärgeschichte*, pp. 162 ff.

21. See Naujoks, *Bismarcks auswärtige Presepolitik du die Reichsgründung*.

22. See Hubensteiner, *Bayerische Geschichte*.

23. See Bavarian State's Chancellery, Press Release Office, 2003.

right wing extremist forces fought against the new republican order. Although the coup attempted by Hitler with his 'March onto the Feldherrenhalle' on 9 November 1923 was crushed by the Bavarian police, his mild sentence of imprisonment did not weaken National Socialism. After Hitler seized power in Berlin in 1933, Bavaria, like the other states, was 'streamlined' and lost its state government.<sup>24</sup> The National Socialist terror per se started its reign in Bavaria. Already in 1933 the first concentration camp was built in Dachau. Political opponents were persecuted mercilessly. The Jewish people, who had been living for centuries in the Bavarian towns and villages, were driven off or murdered. Other minorities like the Sinti and Roma also became the victim to this tyranny. But even during these darkest hours in German and Bavarian history, there were signs of resistance in Bavaria. A vivid example was the circle of the 'White Rose' and the students Hans and Sophie Scholl, Christopher Probst, Alexander Schmorell and Professor Kurt Huber. During the Second World War Bavarian towns were very much affected by the bombings, especially Munich, Nuremberg, Schweinfurt and Würzburg. After the end of the war Bavaria became part of the American Occupation Zone.<sup>25</sup>

## **Bavaria after World War II**

The swift rebuilding of the country was accompanied by a revival of the democratic order. On 1 December 1946, the Bavarian people adopted the Constitution of the Free State of Bavaria by overwhelming majority. Although the Bavarian *Landtag* initially rejected the Constitution of the Federal Republic of Germany due to the fact that Federalism was not strongly enough expressed in it, it nevertheless decided to concede to the Basic Law, provided a majority of two thirds of the other German states accept it. Thus, the Free State of Bavaria has been a state of the Federal Republic of Germany since 1949.<sup>26</sup>

## **2. PSYCHOLOGICAL, SOCIO-CULTURAL AND LINGUISTIC DETERMINANTS**

The historical heritage sketched before and in particular the bitter experiences made as a part of Prussian dominated Germany (1870-1945) have influenced Bavaria's post-war policies to a very large extent. Thus, psychological aspects arose as a product of the historical determinants described before.

Historically focused, one of the most important issues in this context is the battle of Königgrätz/Sadowa in 1866 when Bavaria de facto lost her independence to Prussia, as her ally Austria lost the 'German war' to Prussia. As a consequence, Bavaria had to integrate herself into the Prussian dominated rest of the former German Federation, since Austria was forced to leave it as a consequence of Königgrätz/Sadowa.

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24. Ibid.

25. Ibid.

26. Ibid.



Several cartoons of the satirical Munich journal 'Simplicissimus' dated from about 1900 show the Bavarian perception of being within Germany, by drawing Prussia as a snake which wants to eat the Bavarian rabbit. Another cartoon shows a Bavarian family during a visit to Berlin displaying their total unhappiness to be in the German Empire by sketching all faces very sad, while waving the empire's flag with sinking heart. From today's perspective it seems as if Bavaria was more or less traumatised during these times (1871-1918).

To explain this to a better extent, it must not be omitted in this context to mention the essential lack of cultural convergence between the Rome-oriented Catholic Church which is predominant in Bavaria, the Bavarian 'Laissez Faire', the 'Liberalitas Bavariae' and the low importance of the military<sup>27</sup> on the one hand and Prussian Protestantism, the Prussian idea of a strong state, of having a powerful army with a strong social position and of 'officium', the duty towards the state,<sup>28</sup> on the other hand. This ubiquitous discrepancy of life style and mentalities between 'the North', i.e. first and foremost Prussia, and 'the South', i.e. in particular Bavaria, has played its essential role ever since in Germany and also today there are certain remainders of this historically grown differences.

This discrepancy also played a crucial role on Hitler's road to power, as his election results before 1933 show. He was by far less popular in the Catholic areas than in the Protestant (mainly Northern) regions of Germany. Thus, he got a much smaller turnout of votes in Bavaria than he won in Prussia. Analysing the result of the last free elections in 1932, there was a large gap between Bavaria and the north in terms of the election results. Hitler's party won just about 35% as an average in Bavaria, whereas an average of up to 55-60% voted for him in the Protestant areas of Prussia. There was a saying in Bavaria after 1945 which describes rather well the wide spread public opinion in Bavaria after World War II: 'The Austrians did not even accept Hitler for a painting course, the Bavarians imprisoned him in 1923, but the north gave him first citizenship and then chancellorship.'<sup>29</sup> That was a very wide spread opinion in Bavaria about Northern Germany, and about the past of Germany which was dominated by Prussia and the North.

However, mentioning this issue in this paper should *by no means* serve as an excuse or justification for Bavaria's role as a part of Hitler's empire and regime, it should merely help to provide for a more thorough explanation for Bavaria's rather different stance towards post-war Germany and the new German constitution of 1949. Exactly this opinion described before was one of the reasons that Bavaria was not very enthusiastic after World War II to stay within Germany and there were several voices in Bavaria who advocated total independence from Germany after 1945. Knowing this, it becomes more understandable, why

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27. See Vogel, *Der Stellenwert des Militärischen in Bayern (1849-1875)*.

28. See Neugebauer, *Grundzüge der deutschen Militärgeschichte*.

29. Interview with Mr. Bunzmann, retired journalist and co-editor in chief, Regensburg (19 December 2004).

Bavaria rejected the draft of the Basic Law in 1949. There was, however, the clause mentioned before that Bavaria will enter Germany if two thirds of all other German Federal States are in favour of the constitution. Not surprisingly, exactly this happened and thus Bavaria became once again a part of Germany.

Throughout time Bavaria has been far from being an easy going partner of the North.<sup>30</sup> With its centuries-strong political and cultural integrity the Free State of Bavaria became *the* symbol of Federalism and independence within the Federal Republic of Germany. This fame is also due to the role played by Bavaria in founding the German national state in the 19th century. Already at the drafting of the constitution in 1871, the Kingdom of Bavaria used its influence to promote and preserve the independence of the states in the German Reich (Royal Bavarian Mail, Railway, Army as reserved rights). The decline of the 1871 Reich after the disaster of World War I and Versailles 1919 pushed Federalism as a characteristic feature of the German state system to the background.<sup>31</sup> The Weimar Constitution of 1919 had a markedly more centralist character. The establishment of the Nazi dictatorship in Germany led to the streamlining of the Federal States ('Gleichschaltung'). They were now only administrative regions, subordinate to the Nazi party apparatus. After 1945 the German states applied themselves to restore the all-German state system. It was precisely the federal provinces, which founded the Federal Republic of Germany. At the Convention for the Constitution, held in Herrenchiemsee, Bavaria, in 1948, they formulated their ideas of an all-German Constitution, which to a great degree were adopted by the Basic Law of the later Federal Republic of Germany (Bundesrepublik Deutschland).<sup>32</sup>

Thus, Bavaria became the main advocate of Federalism within Germany, as she wanted to prevent for all times that her experiences during the period from 1870 to 1945 may repeat again. From Bavaria's perspective a well functioning Federalism is regarded as being the best guarantee to avoid any successful revival of past sins. Moreover, Federalism is seen as a means to unite the Federal Republic of Germany as the link between the states and the Federation. In particular in the opinion of the Bavarian people, Federalism also secures a great deal of more democracy, as it brings the state closer to its citizens. Moreover, it makes the state directly responsible to them for its decision-making. Thus, it is of particular interest for Bavaria that German Federalism protects cultural distinctiveness and ensures diversity where established traditions contribute to the wealth of German society. By guaranteeing these vital Bavarian interests,

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30. Two quotations which express the Bavarian opinion very well are for example: 'The Bavarians are deeply convinced that the decline of the occident is coming from the north' (Oswald Spengler). Moreover, the Bavarian Prime Minister Franz-Josef Strauß (1978-1988) e.g. summarised Bavaria's position within Germany by pointing out that 'Bavaria had already a constitution, while Kurfürstendamm (i.e. one of the main roads of Berlin) was still a path on which stinging nettles were growing.' This two quotations show aptly that the Bavarians and the Northern Germans have not enjoyed the best relationship since 1871.

31. Zehetmair, 'Die Kulturhoheit der Länder. Kernstück der Eigenstaatlichkeit'.

32. See Bavarian State's Chancellery, Press Release Office, 2003.

German Federalism enabled Bavaria to accommodate herself well in the Federal Republic of Germany after 1949.

### 3. THE POLITICAL POSITION OF BAVARIA AFTER 1949

The political position of Bavaria after 1945, introduced before, is based on the system of Federalism. Federalism is the link between the Federal Republic and the provinces or *Länder* in Germany. Within centuries a strong political and cultural integrity has developed and the Free State of Bavaria is well aware of its own history. This is also due to its size and number of inhabitants, as it is one of the biggest Federal States of Germany and therefore also the biggest advocate of Federalism.

The 188 articles of the Bavarian Constitution regulate the structure and functions of the State and guarantee the basic rights and obligations of the citizens. They also establish the principles governing the most important aspects of communal life (marriage and family, schooling, religious communities) and the economy. Article 178 of the Bavarian Constitution defines Bavaria as a separate state whose existence is to be guaranteed.<sup>33</sup>

Today, Bavaria is administrated by seven districts, three of them Franconian (Upper Franconia, Middle Franconia and Lower Franconia), one Schwabian (Schwabia), and three Bavarian (Upper Bavaria, Lower Bavaria and the Upper Palatinate). There are also three major dialects: Bavarian, Franconian and Schwabian. These dialects are very much related to neighbouring countries or German Federal States like for example Bavarian to Austrian, Schwabian to the Western part of Southern Germany (Federal State of Baden Württemberg) and Franconian to Thuringian in the North and to Hessian in the North West. However, Bavaria does not have a different language, like e.g. the Basques have, but nevertheless, some linguistic differences can be isolated. It is possible for a Bavarian person to talk in Bavarian to a Northern German person who will not understand the content. Moreover, it can be rather hard for Bavarians to talk in standard German because it is just not spoken very often in the normal life of the rural areas of Bavaria.<sup>34</sup> In this context the linguistic differences are extremely important to show the difference.

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33. Ibid.

34. '...Bavaria has its own status within Germany, which is comparable to that of Texas in the USA,' says Stoiber's biographer Michael Stiller. ... '(Bavarians) are very independent, very confident. They are respected in the republic but not always understood.' ... 'Religion also enters the equation. When Germany decided there shouldn't be crucifixes on classroom walls, Catholic Bavaria fought the decision [successfully] all the way.'

'There are strong traditions in Bavaria,' says the University of Munich's Professor of German language Dr Kiessling. 'We have a strong accent. People in the rest of Germany don't understand us if we speak in this strong accent, and so we seem to be something different. Many say we are more conservative, we are more religious and so other Germans are suspicious of Bavarians. ...' [By CNN European Political Editor Robin Oakley Friday, September 20, 2002 Posted: 5:40 AM EDT (0940 GMT)].

These seven regions are split into seventy-one counties (Landkreise), twenty five urban districts (Kreisfreie Städte) and 2031 municipalities or parishes (Gemeinden, Großgemeinden, Marktgemeinden or Stadtgemeinden). Of these municipalities, 1028 have an administration of their own (unified municipalities).<sup>35</sup> The other 1003 municipalities are organized in 319 administrative communities (member-municipalities).<sup>36</sup>

This federal structure is the result of German history and as mentioned before Bavaria defends this Status Quo very much, in particular in the Bundesrat, the Upper House of the Houses of Parliament in Berlin, where the Federal States participate at the legislation and administration of the Federal Republic. The Bundesrat is one of the five permanent constitutional bodies of the Federal Republic of Germany<sup>37</sup> and it is not a directly elected parliament, but it is a constitutional body of the Federal Republic appointed by the governments of the Federal States. Legally, article 50 of the 'Basic Law' defines the position of the Bundesrat and of the *Länder* within Germany. The *Länder* shall participate within the Bundesrat and the legislation and administration of the federation and its matters concerning the European Union. This is the central article of the constitution which matters for Bavaria in her claims for contributions to European affairs and it is taken very seriously by the Bavarian government and Bavaria really defends this right very intensely.

The sixteen Federal States send deputies into the Bundesrat,<sup>38</sup> chosen by the state governments. The Bundesrat consists of 69 members of whom Bavaria sends six members. They are, for example, the Bavarian Prime Minister Edmund Stoiber (PM since 1993). The deputies of a federal state do not have a free mandate, they are bound to the decisions of their government and the deputies of a federal state have to vote en bloc with 'yes', 'no' or 'abstention'.<sup>39</sup>

Bavaria was the largest Federal State of Western Germany after 1949 and enjoyed a very strong position within this very small Germany. This was the reason why Bavaria was not the most enthusiastic part of Western Germany with regards to unification in 1990, as Bavaria was the strongest part of Western Germany. However, by adding most of Prussia and the succeeding Prussian provinces of Eastern Germany to Western Germany in 1990, Bavaria's importance within Germany was reduced. Before unification Bavaria comprised of 16.2 % of the population and of 20.8 % of the territory and afterwards it decreased to 14.7 and 19.4. Moreover, Bavaria's representation within Germany is also rather biconvex, as Eastern Germany which is populated by a mere 15 million

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35. Articles 11 II, IV, V and 83 I of the Bavarian Constitution (BV).

36. Bavarian State's Chancellery, Press Release 2003.

37. [The others are the President of the Federal Republic of Germany (Bundespräsident), the first chamber of the Houses of Parliament (Bundestag), the Federal Government (Bundesregierung) and the Federal Constitutional Court (Bundesverfassungsgericht), Article 43, Abs. 1, BV].

38. Articles 50-53 of the German Constitution (GG).

39. Article 51, Abs. 1, 1, GG.

inhabitants, is represented by 23 deputies in the Bundesrat, the second chamber of the German Houses of Parliament, whereas Bavaria's more than 12 millions are represented by a mere 6 deputies. This means that there is one deputy for two million citizens in Bavaria and one deputy for 600.000 people in Eastern Germany.

Today, the first chamber of the Bavarian Houses of Parliament, the *Landtag*<sup>40</sup> has 180 members. They are elected every five years under an improved law of proportional representation (first applied on 13 September 1998). Until 1999 there was a second chamber of Parliament, the *Senat* (Senate),<sup>41</sup> which had an advisory role and which was not an elected body, but recruiting its members from the different branches of the Bavarian Economy, thus guaranteeing their voice in political decisions, made by the *Landtag* and by the Bavarian Government. After a public campaign the *Senat* was abolished in 1998, following a general poll, since the majority of the people found it more important to save some million Marks a year than to have the precious and permanent expertise of economists and other experts.

Since 1957 Bavaria has been ruled by the same party, the Christian Social Union (CSU), and since 1962 by having an absolute majority. The elections of 21 September 2003 even gave a two thirds majority to Prime Minister Stoiber's party. In these elections 57.1% of voters went to the polls. The Christian Social Union (CSU) received 60.7% of the votes, the Social Democratic Party of Germany (SPD) 19.6% and the Union 90/Green Party 7.7%. Thus, the CSU obtained 125 seats in the *Landtag*, the SPD got 41 seats and Union 90/Green Party 15 seats.<sup>42</sup>

Following the provisions of the Bavarian Constitution, the State Government<sup>43</sup> is the supreme executive authority of Bavaria. Elected for a 5-year term, it consists of the Minister-President, the State Ministers and the State Secretaries.<sup>44</sup> The Minister-President determines the political guidelines, presides over the State Government, represents Bavaria abroad, awards distinctions and medals of honour and manages the work of his government. In single cases he can also reduce a sentence or release a person from prison. With the approval of the *Landtag* he/she appoints and dismisses the State Ministers and State Secretaries and represents Bavaria within and outside her borders. In contrast to the Federal Government and governments of other Federal States, every Bavarian State Secretary holds a seat and has a vote in the State Government. However, when fulfilling their tasks, the State Secretaries are bound to the instructions of their Ministers. Whenever a Minister is prevented to fulfil his duties for one or another

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40. Articles 13-33, BV.

41. Articles 34-42 BV.

42. See Bavarian State's Chancellery, Press Release 2003.

43. Articles 43-59, BV.

44. Article 43, Abs. 2 BV.

reason, the State Secretary shall act at his own discretion, bearing full responsibility for his actions before the *Landtag*.<sup>45</sup>

The tasks of the State Government are split amongst the following portfolios:<sup>46</sup> the State Chancellery, state ministries of the Interior; of Justice; of Education and Religious Affairs; of Science, Research and the Arts, of Finance; of Economics, Infrastructure, Transport and Technology; of Agriculture and Forestry; of Labour and Social Order, Family and Women; of Environmental Affairs, Health and Costumer Affairs.<sup>47</sup> There are two separate ministers in charge of the State Chancellery;<sup>48</sup> one of them is the chief of the State Chancellery and responsible for Federal Affairs and the Reform of state administration. The other minister is responsible for European Affairs and Regional Relations. The ministers manage their departments in accordance with the guidelines determined by the Minister-President and are fully responsible to the *Landtag*.<sup>49</sup>

The 'Bavarian State Minister for Federal Affairs is Bavaria's authorized representative to the Federal Republic. His office in Berlin has the status of a 'Bavarian Embassy'. His task is to represent Bavaria's interests in the Federal Republic and towards other states. Together with his assistants, he monitors the political events in Berlin, promptly introduces the Bavarian position in the opinion-forming processes in the Federal Republic, and reports to the Bavarian State Ministries and to the *Landtag* about the work of the Bundestag and the Federal Government.<sup>50</sup> By offering a large programme of events, the Bavarian Representative Office in Berlin also renders a living picture of Bavaria. Next to Bavarian policies, it also presents the Bavarian economy and culture, science and arts, agriculture and crafts, the districts, towns and municipalities. The Representative Office is used as a venue for meetings with the Federation and the other states.

Theoretically, all German *Länder* are permitted to represent themselves in this way, but Bavaria stresses it the most, in particular because of her history. Moreover, also Bavaria's internal structure and administration resembles this attitude. The state administration is the supreme authority of Bavaria, having the Bavarian Government at the top and the provincial bodies on high and medium level. The Regional Governments (*Regierungen*) are nominated like Prefectures in France with the president (*Regierungspräsident*) at the top.<sup>51</sup> Parallel to those

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45. See Bavarian State's Chancellery, Press Release Office, 2003. Articles 50 Abs. 2, 1 and 51 Abs. 2, 2 BV.

46. Article 49, Abs. 1 BV.

47. See Bavarian State's Chancellery, Press Release Office, 2003.

48. In accordance with Article 49, Abs. 3, BV.

49. See Bavarian State's Chancellery, Press Release Office, 2003.

50. Ibid.

51. Thus, when summarising, it can be seen that the Bavarian administration is actually rather centralised. Most of the important institutions are situated in or near Munich. However, it is interesting to note that when the German constitutional assembly was meeting in 1948-49, Bavaria criticised the lack of having a stronger Federalism in Federal Germany.

there is an elected body, the so-called Regional Office (Bezirk) which is governed by a directly elected Regional Diet (Bezirkstag) and presided by an elected President (Bezirkstagspräsident). Whereas the seven Regional Governments in Upper Bavaria, Lower Bavaria, Upper Palatinate, Upper Franconia, Middle Franconia, Lower Franconia and Schwabia are subordinate to the Ministry of the Interior, but also undertake special functions within the scope of responsibilities of almost all other State Ministries, the seven Regional Offices are dual authorities: they are state bodies ('a body of regional administration'), insofar as they perform tasks of the State, and district bodies, insofar as they implement tasks of the district. In conformity with the principle of unity of administration, the Regional Governments carry out joint functions and represent the State Government at the level of their region. The Regional Offices, however, are headed by the Regional President, elected by the directly elected Regional Diet (Bezirkstag). This system is framed by a law administrative body in special services. The last level consists of the counties, parishes and municipalities.

Another issue which is very important in this context is that the first article of the Bavarian constitution says that Bavaria is a 'Free State'. This was aimed to clearly state the end of monarchy. The term 'Free State' was only chosen because the fathers of the Bavarian constitution were reluctant to use a foreign expression like 'Republic', a Latin expression, so they chose 'Freistaat' which means 'Free State'. However, today, the expression Free State is often referred to as being interpreted in terms of *literally being a free state*, which basically means in that point that the Bavarian government tries to have a special role within Germany by stressing Bavaria's free state status.

These issues show that basically on the legal level Bavaria's role is not different at all from that of any other *Land* in Germany. Moreover, very important points are the before mentioned: The psychological and historical aspects, the kind of self-perception as feeling special and using this conscience of feeling special for political purposes. This is of course also the product of the ruling Bavarian party, the Christian Social Union (CSU), which stresses Bavarian independence and Bavarian sovereignty. This is highly appreciated by the voters and the Bavarian legislation monopoly which is granted basically to all other *Länder* in Germany on the field of the police, internal security, education, cultural policy, internal intelligence service and partly on the area of taxation and welfare policy is steadily defended by Bavaria. Moreover, Bavaria's bills can either be passed by the *Landtag* or directly by the people.<sup>52</sup> This form of direct democracy is unique in Germany. It only exists in Bavaria.

However, Bavarian influence is much stronger because much of the federal law is implemented by the *Länder* (Ausführung der Bundesgesetze, i.e. Implementation of the Federal Bills). This includes the so called 'Administration Competence', which consists of the most common *exclusive administration of the Federal States*,<sup>53</sup> the *administration on behalf of the Fede-*

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52. Article 74, Abs. 1-4, BV.

53. Articles 83 and 84, GG.

ration,<sup>54</sup> the *direct Federal administration*<sup>55</sup> and the *exclusive Federal administration*.<sup>56</sup> Thus, the *Länder* have an influence on all legal aspects which they have to implement. As the *Länder* have to pay for the implementation of the bills, they very often also influence the way of implementing them if there is any political disagreement on them.

However, the major difference between the different *Länder* is beyond any doubt the education system, as it is also the major means of advocating for Bavarian independence. Education policy is also called the 'core of the sovereignty of the Federal States'.<sup>57</sup> For example, the social Studies Institute of the German Armed Forces has done research over a sample of 250,000 recruits by applying an intelligence test. The output gave a clear regional IQ distribution within Germany. The result is very flattering for Bavaria indeed, as it speaks a clear language: Bavaria has the by far highest average IQ amongst young people (together with her Western neighbour Baden Württemberg). This might be seen as the result of the Bavarian education system which is by far the strictest and toughest within Germany. The rate of observance at universities and school is far lower than in the rest of Germany. Also the number of degrees converted is far smaller. And of course, these things are used by the ruling conservatives in Bavaria as a sign of the special role of Bavaria.

One result of such policies is for example the result of the last elections in 2003 mentioned before. It is very interesting to know that after their disaster in the 2003 elections the Bavarian Social Democrats briefly even thought about officially changing their name into SPB instead of SPD (Social Democrat Party of Bavaria instead of Social Democrat Party of Germany) just to get rid of the name *Germany*, as it is not very popular and as the Bavarian Conservatives only exist in Bavaria and not in the rest of Germany which makes them far more popular for Bavarian voters. In the end they did not change their name, but it is very telling that there was a discussion to do so.

The quotation here<sup>58</sup> is also very telling with regards to the Bavarian government's position towards German legislation. There was a decision of the constitutional court in Germany to ban crucifixes from classrooms and the Bavarian government just respected the decision to ban them, but refused to implement it. And there are several other examples where these things become obvious, for example, as a court in northern Germany decided that the times at which loud music can be played in beer gardens should be reduced and the Bavarian

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54. Articles 85, 87b II, 87c, 87d II, 90 II, 104a III 2, 108 III, 120a and on request Article 89 II 3, GG.

55. Articles 86, 87 I, III, 87b, 87d I, 88, 89 II 1, 108 I, 120a, GG.

56. Articles 86, 87 II, III 1, GG.

57. Zehetmair, 'Die Kulturhoheit der Länder. Kernstück der Eigenstaatlichkeit', p. 18.

58. 'We respect the decision of the German Constitutional Court regarding crucifixes in classrooms, but we will not accept its content.' (PM Stoiber, *Süddeutsche Zeitung*, 21 May 1999, p. 4).



government passed an own law opposing this decision and extending the times of playing loud music, stressing that if people live in Bavaria they have to live with loud music. These decisions basically show how controversial the Bavarian position partly is to the federal position.<sup>59</sup>

#### 4. INTERNATIONAL REPRESENTATION AND CO-OPERATION

##### **Bavaria's representation in Europe**

As the bond of European integration tightens, an increasing number of decisions directly affecting Bavaria are being transferred to Brussels. Thus, also the Bavarian government has to orient itself towards Brussels. While Bavaria advocates European integration she also defends of course her own means of influence. By doing so, the government seems to have the attitude, that if Bavarian influence or means of influence really have to be given up, they prefer to do this towards Europe rather than in favour of Berlin. Of course, if possible, Bavaria would like to keep most of her own competencies and she is convinced that the principle of subsidiarity would serve best to provide the citizens with several layers of government, each of them dealing with issues while being competent to tackle them in an appropriate way.<sup>60</sup> Thus, swiftly developing European structures lead to the necessity to represent Bavaria and Bavarian interests on the international level. Therefore, Bavaria opened an own representation in Brussels and she a member of the European council of the regions. Moreover, she participates at the community of the Alpine States,<sup>61</sup> the community of the Eastern Alps and the Adriatic Sea,<sup>62</sup> the international conference on Lake Constance<sup>63</sup> of the Community of the Danubian States<sup>64</sup> and at cross-border cooperations along the German border (Euregios).<sup>65</sup>

As mentioned before, one of the slogans of the Bavarian government is subsidiarity, and of course it is mostly interpreted in favour of Bavaria: Most of the things should be done on the regional or Bavarian level and not on the German level or European level, but if they have to be done in a higher level they should be done in Europe rather than in Berlin. This is a kind of constant in Bavarian policy and that is also a reason why there are strong partnerships with other

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59. Moreover, there is even a separatist party, having the slogan 'If you have to save money you should save it by not having Berlin'<sup>59</sup> as an intermediate state.

60. See e.g. Loughlin, *The Diversity of the Regional Question. The Regional Question, Subsidiarity and the Future of Europe*.

61. Community of Alpine States (PO Alp) founded in 1972 (11 members from 4 countries).

62. Community of the Eastern Alps and Adriatic (PO Alpen-Adria), founded in 1978 (17 members from 7 countries).

63. International Bodensee Conference, founded in 1978 (10 members from 4 states).

64. Community of Danubian States, founded in 1990 (23 members from 11 states).

65. Euregio Egrensis, Euregio Bayrischer Wald/Boemerwald, Inn-Salzach-Euregio and Euregio Salzburg - Berchtesgaden Land/Traustein.

regions of Europe, for example with the Basque Country, the neighbouring Federal States of the Austrian Federation, namely Upper Austria, Tyrol and Salzburg and the Italian Autonomous Region Trentino-Südtirol, as it has a very similar role within Italy, like the Basque Country has within Spain. These cooperations are not just coincident, as most of her partners have similar interests within their national states as Bavaria has in Germany. This is also one of the reasons why Bavaria is very active on the European level and there is also a strong cooperation with France and French regions (Languedoc-Roussillon, Midi-Pyrenees and Provence-Alpes-Cote d'Azur), as the Bavarians have strong historical bonds to France. As a historian, it is interesting to note in this context that it was Napoleon who made Bavaria a kingdom.

Bavaria is a part of permanent working groups, in particular with having a focus on Eastern Europe, having established them with Croatia, Slovenia, the Czech Republic, Slovakia, Hungary, Bulgaria, the Ukraine, the city of Moscow and Macedonia. It is the aim of Bavaria to support the establishment of democratic structures and of a functioning Civil Society in these countries and regions. Bavaria wants to assist these countries on their way towards Western Europe and she also aims to support the German minorities in these countries to open new prospects for their citizens to remain in their home countries. One further example for this international policy of Bavaria is the cooperation with Quebec as a region which has a special role within its national state Canada as well. As a significant exporter with considerable economic potential, Bavaria aims to gain a place in the prospective markets in Asia and America. For this purpose Bavaria maintains partnerships with California, Sao Paulo/Brazil and the Shandong Province in the People's Republic of China. In order to contribute to stabilization of economic and political relations in the Republic of South Africa, Bavaria has established contacts with the provinces of Western Cape and Gauteng.<sup>66</sup>

Bavaria's role and policy in Europe is described by the Bavarian State Chancellery as follows:

(...) The Treaties of Maastricht (which was implemented on 1 November 1993) and Amsterdam (1 May 1999) shifted ever more competencies to the European Union. Thus, the Bundesrat, on the insistence of Bavaria, has secured an important means of influence for the German Federal States in questions of European policy. When negotiating matters affecting the competence of the Federal States in Brussels, the Federal Government has to consult the Federal States and take into account their stands. Moreover, the Maastricht Treaty granted the provinces for the first time a right to self-representation at the EU Council of Ministers in matters of exclusive competence and concerning the paramount interests of the Federal States, while the Committee of Regions in Europe was created as a consultative representative body of the regions and municipalities. To represent Bava-

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66. See Bavarian State's Chancellery, Press Release Office, 2003

ria's interests at the European institutions to a better extent, the Free State has set up its own representation in the Belgian capital. Its function is to keep the state government better and opportunely informed of the developments in the European Union which are of particular importance to Bavaria, and to get its interests appropriately taken into account in the decisions.

The Representative Office fosters contacts with the European Union and other international organizations and is the first port of call for Bavarian businesses. An important goal of Bavaria's European policy is to preserve Bavarian sovereignty and the related scope of political action. This requires a strict observance of the principle of subsidiarity, according to which EU could engage only in such tasks, which cannot be tackled on a regional or national level. Diversity, individual responsibility, competitiveness, and distinct formulation of competencies should be respected by the EU. This principle shall acquire further weight in the light of the forthcoming expansion of EU with 12 or more new member-countries. In order to continue to perform properly its functions, the EU should not only basically reform its institutions, but should increasingly concentrate on purely European challenges. This calls for a critical analysis of the EU tasks and their redefinition in the form of distinctly formulated competencies.<sup>67</sup>

Concluding upon this political programme with regards to the European Union, two key aspects become obvious: First, Bavaria's steady efforts for the European integration of Bavaria and secondly her attempts to secure as much independence as possible. Again, Bavaria sees herself rather at the periphery of Germany but in the centre of Europe. Thus, it is a strong advocate of European integration, but stresses nevertheless the need for representation and autonomy for the regions of Europe. By doing so, the Free State of Bavaria aims to balance its claim for autonomy and decided to actively participate in the social economic and political life of Germany as well as of Europe.

## 5. CONCLUSION AND FUTURE CHALLENGES

The political role of Bavaria is intimately connected with the traditions of the Bavarian state and its regional entity. One of Europe's oldest existent political entities with a history spanning over more than 1500 years periodically refers to her independence and expresses her unwillingness to fit herself into supporting a role in a greater whole. Bavaria stresses a federal model in which subsidiarity should be the main constant of Bavarian, German and European policies and she is the main advocate of Federalism in Germany. A well functioning Federalism is regarded by Bavaria as a guarantee for achieving her aims and interests and for protecting her cultural differences. Moreover, Federalism is assessed as a tool solve problems between regions and the Federation, since article 20 of the German Constitution guarantees rights to all *Länder* of Germany and unlike in Spain, it is legally guaranteed and it is a feature of the German constitution. This is the reason why Bavaria can rely on these determinants.

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67. See Bavarian State's Chancellery, Press Release Office, 2003

Nevertheless, Bavaria interprets her options offered by this legal framework traditionally very generously, as for example during the Cold War the Bavarian Prime Minister Franz Josef Strauß (CSU) flew to Moscow and met Gorbachov for example, he visited Israel, Syria and Chile, he mediated between South Africa and Mozambique in 1988 and he gave a billion Marks credit to East Germany, which was little coordinated with the German government. These actions were not really sanctioned by the German constitution, as foreign policy is a pure domain of the Federal level. However, the German system is flexible enough and the north did not really intervene because the Bavarians did not really commit an offence against the unity of the Federal Republic. Moreover, it was seen as a kind of tribute to comfort Bavaria's self perception by granting such activities by turning a blind eye towards them. Altogether, the Bavarians' own definition of such 'free space' for foreign activities is of course stricter if the Conservatives are in power in Berlin. If the Social Democrats rule in Berlin Bavaria's interpretation is more generous. Moreover, the Bavarian Government traditionally benefits from stressing Bavarian achievements and Federal blunders. For example, the unemployment rate in Bavaria is almost half of that on the German level and the public finance is more or less solid. Issues like that are emphasised of course and they help the conservative party to keep in power.

Altogether, Bavaria's special state is less guaranteed by special rights than by simply being and feeling distinctively different from the rest of Germany. The own creation of Bavaria provides a special role within Germany. It is less guaranteed by real rights which are different from those of e.g. Saxony or Lower Saxony, that it is by Bavaria's really long tradition of statehood which enables the Bavarian government to decide differently and which is responsible for example for things like the issue that beer does not count as alcohol but as food stuff in Bavaria. Things like that are seen as highly important even if they are not really. However, these things are basically seen as a kind of symbol of still showing some sort of independence. In Bavaria this 'showing of force' is not militant and there is no bombing or any sort of violence, but there are several things which are definitely defended by all means apart from violence, even if they might sound ridiculous for Non-Bavarians. These differences even led to the point that Prime Minister Stoiber's chances to become Chancellor in 2002 deteriorated from the very beginning because no indigenous Bavarian managed ever to win a national election since 1949.<sup>68</sup>

Bavaria has a special role and the Bavarians are effective in preserving this special role. However, on the federal level it is hard because the cultural differences are really considerable and this makes it very hard for northern Germans to accept a Bavarian being at the top of Germany, and vice versa. This is the dilemma for Bavaria. The strong regional identity prevents any larger influence on the federal level, in particular due to the unique position of the CSU. Of course,

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68. There are two exceptions to this, which were only possible by their special circumstances. The Franconian Ludwig Erhardt was Chancellor from 1963-1966, but he was a member of the Northern sister party of the CSU, the CDU. Professor Roman Herzog was Federal President from 1994-99, but he did not have to be elected by the people's vote, but by an elective committee in which his supporters, the Liberals and Conservatives, had a majority.

on the one hand this provides advantages, on the other hand it also limits the chances within Germany.

However, although the described differences make it sometimes hard for Bavaria to live with Germany and for Germany to include Bavaria, independence and integration are not seen as incompatible points of view by Bavaria, but rather represent the special position of the Free State of Bavaria in Germany and Europe. Bavarian policy is dominated by the will to advocate for a *Modus Vivendi* between independence and integration, mindful of the Bavarian historical, political, cultural and economic achievements and following the Bavarian ideal, the *Liberalitas Bavariae*.

The other German states on the other side, with the permanent exception of Saxony and Baden-Württemberg (Schwabia and Badenia), often misunderstand Bavarian temper and conservatism as being backward, reactionary or separatist. However, it never goes as far as in other cases in Europe, like Northern Ireland, the Basque Country or Corsica. German Federalism offers both sides enough space to express themselves without violence or major frictions.

In single instances of minor importance it even seems as if Bavaria stresses her interests only to keep up her image and if she intentionally painted the picture of the humourless Prussian from Berlin willing to derive Bavaria from her guaranteed rights and trying to 'steal' her traditions (e.g. 1. the 'Beer Garden Decision' of the Bavarian government which allowed Bavarian beer gardens to have longer service hours in the evenings including the permission to play loud traditional folk music excluding the option for legal complaints by neighbours; 2. the decision to declare beer as foodstuff and not as alcohol etc. pp.). On the other side it seems as if the rest of Germany only draws a Bavaria full with leather trouser wearing and beer drinking conservatives who attend beer-gardens every day.

However, both sides live happily with these stereotypes and they both even profit from them. This conflict, if it is a real conflict, is partly definitely not seen that seriously on both sides of the 'white sausage equator', the legendary boundary between Bavaria and 'Prussia' (i.e. simply the rest of Germany which is not Bavarian). Bavaria for her part uses her special role and is thus able to widen her freedom of action.

Given these preconditions, Bavarians are little inclined to sacrifice rights to higher bodies, such as Germany or Europe. Having had a long lasting experience of subordinating herself to Germany, Bavaria even seems to have a certain preference, to give rights -if unavoidable- to Brussels than to Berlin. The ruling CSU uses this popular consent to bargain from this Europhilia for its own political position. There is a certain Bavarian revival by advocating the European project. The more intense the economic problems of Germany become, the more the Bavarians stress their own economic success and their own roots. This is in particular the case the longer the predominantly Protestant and Northern German Social Democratic Party (SPD) rules in Berlin.

Thus, two divergent movements meet: Advocating Europe, but becoming more and more aware of distinctively Bavarian traditions. This is even more so, the more Germany's charges for influence (as a re-compensation for her own sacrifices to Brussels) grind against Bavaria's own competencies.

Beyond any doubt it is the merit of the well functioning federal system in Germany which provides a good framework for both sides, for the north and the south, and which helps to reduce tensions between them. Nevertheless, breeches and tensions remain and of course on the Bavarian side the indirect stress of independence became a kind of self profiling prophecy. On the northern side it became a self profiling prophecy to summarise Bavarians as beer drinking and sausage eating October-Feast visitors which are of course the stereotypes, that partly influence German internal policy and which are -even if they seem to be little serious- one of the major issues of this paper- as *really* legal differences just do not exist between Bavaria and the other German *Länder*.

Nevertheless, even in the well functioning Federal system of Germany there are several frictions which prevail. And finally, linking this paper to the paper of Professor Xabier Ezeizabarrena, it could be even seen as if all the issues focused before are a kind of attempt to create some historical rights of being different from the rest of Germany. However, I would rather call the Bavarian case the 'Myth Bavaria', as her special role within Germany can not really be defined by legal terms.

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